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AUTHORITY: 5 U.S.C. 552b; 42 U.S.C. 2286, 2286b(c).

SOURCE: 56 FR 9609, Mar. 7, 1991, unless otherwise noted.

### § 1704.1 Applicability.

(a) This part implements the provisions of the Government in the Sunshine Act (5 U.S.C. 552b). These procedures apply to meetings, as defined herein, of the Members of the Defense Nuclear Facilities Safety Board (Board). The Board may waive the provisions set forth in this part to the extent authorized by law.

(b) Requests for all documents other than the transcripts, recordings, and minutes described in §1704.8 shall be governed by Board regulations pursuant to the Freedom of Information Act (5 U.S.C. 552).

### § 1704.2 Definitions.

As used in this part:

(a) *Chairman* and *Vice Chairman* mean those Members designated by the President to serve in said positions, pursuant to 42 U.S.C. 2286(c).

(b) *Defense Nuclear Facilities Safety Board* means the Board established under the National Defense Authorization Act, Fiscal Year 1989.

(c) *General Counsel* means the Board's principal legal officer, or an attorney serving as Acting General Counsel.

(d) *Meeting* means the deliberations of three or more Members where such deliberations determine or result in the joint conduct or disposition of official Board business. A meeting does not include:

(1) Notation voting or similar consideration of business for the purpose of recording of votes, whether by circula-

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tion of material to the Members individually in writing or by a polling of the Members individually by telephone.

(2) Action by three or more Members to:

(i) Open or to close a meeting or to release or to withhold information pursuant to §1704.5;

(ii) Set an agenda for a proposed meeting(s);

(iii) Call a meeting on less than seven days' notice as permitted by §1704.6(b); or

(iv) Change the subject matter or the determination to open or to close a publicly announced meeting under §1704.7(b).

(3) A session attended by three or more Members for which the purpose is to have the Board's staff or expert consultants to the Board brief or otherwise provide information to the Board concerning any matters within the purview of the Board under its authorizing statute, provided that the Board does not engage in deliberations that determine or result in the joint conduct or disposition of official Board business on such matters.

(4) A session attended by three or more Members for which the purpose is to have the Department of Energy (including its contractors) or other persons or organizations brief or otherwise provide information to the Board concerning any matters within the purview of the Board under its authorizing statute, provided that the Board does not engage in deliberations that determine or result in the joint conduct or disposition of official Board business on such matters.

(5) A gathering of Members for the purpose of holding informal preliminary discussions or exchange of views which do not effectively predetermine official action.

(e) *Member* means an individual duly appointed and confirmed to the collegial body, known as "the Board."

### § 1704.3 Open meetings requirement.

(a) Any meetings of the Board, as defined in §1704.2, shall be conducted in accordance with this part. Except as provided in §1704.4, the Board's meetings, or portions thereof, shall be open to public observation.

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(b) The General Counsel or his designee will attend and monitor briefings described in §1704.2(d) (3)–(4) and informal preliminary discussions described in §1704.2(d)(5) to assure that those gatherings do not proceed to the point of becoming deliberations and “meetings” within the meaning of the Sunshine Act.

(c) The General Counsel or his designee will inform the Board Members if developing discussions at a briefing or gathering should be deferred until a notice of an open or closed meeting can be published in the FEDERAL REGISTER, and a meeting conducted pursuant to the Sunshine Act and these regulations.

### **§ 1704.4 Grounds on which meetings may be closed or information may be withheld.**

Except in a case where the Board finds that the public interest requires otherwise, a meeting may be closed and information pertinent to such meeting otherwise required by §§1704.5, 1704.6, and 1704.7 to be disclosed to the public may be withheld if the Board properly determines that such meeting or portion thereof or the disclosure of such information is likely to:

(a) Disclose matters that are:

(1) Specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy; and

(2) In fact properly classified pursuant to such Executive order. In making the determination that this exemption applies, the Board shall rely upon the classification assigned to a document by the Department of Energy or other originating agency;

(b) Relate solely to the internal personnel rules and practices of the Board;

(c) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552): *Provided*, That such statute:

(1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(2) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

This exemption applies to Board meetings, or portions of meetings, involving

deliberations regarding recommendations which, under 42 U.S.C. 2286d (a) and (g)(3), may not be made publicly available until after they have been received by the Secretary of Energy or the President, respectively;

(d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Involve accusing any person of a crime, or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which, if written, would be contained in such records, but only to the extent that the production of such records or information would;

(1) Interfere with enforcement proceedings;

(2) Deprive a person of a right to a fair trial or an impartial adjudication;

(3) Constitute an unwarranted invasion of personal privacy;

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(5) Disclose investigative techniques and procedures; or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed action of the Board, except that this subsection shall not apply in any instance where the Board has already disclosed to the public the content or nature of its proposed action, or where the Board is required by law to make such disclosure on its own initiative prior to taking final action on such proposal;

(i) Specifically concern the Board's issuance of a subpoena, or the Board's participation in a civil action or proceeding, an action in a foreign court or